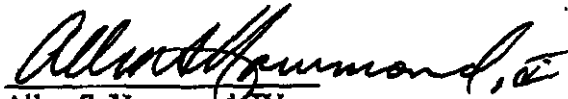


Declaration of  
Allen S. Hammond, IV, Professor of Law and  
Catherine J.K. Sandoval, Assistant Professor of Law,  
Santa Clara University School of Law

In support of comments filed by the Minority Media Telecommunications Council in  
Response to the Commission's Media Bureau issued Public Notice DA 04-1690  
Seeking comment on ways to further the mandate contained in  
Section 257 of the Telecommunications Act of 1996, 47 U.S.C. § 257.

The authors have provided edited summaries and analysis of studies addressing issues of minority ownership in the broadcast and wireless markets which studies have relevance to the FCC's section 257 inquiry. The summaries and analysis are provided in our capacity as law faculty at the Santa Clara University School of Law.



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# Analysis of Studies Addressing Broadcast and Wireless Ownership Diversity

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## Introduction: Diversity as a Compelling Interest

### A. Is Diversity a Compelling Government Interest?

The *Grutter* majority opinion establishes that diversity is a compelling state interest for purposes of determining the constitutionality of race-based governmental action in the context of equal protection jurisprudence.<sup>1</sup> Having answered the threshold question in the affirmative, we are still left with the secondary question of whether the Court would consider the government interest in facilitating broadcast station owner diversity to be compelling. For, Justice O'Connor, the author of the *Grutter* majority opinion affirming diversity as a compelling interest, is also the author of the dissenting opinion in *Metro Broadcasting* challenging the government's assertion that its interest in broadcast station ownership diversity is compelling.

### B. Is Broadcast Diversity a Compelling Government Interest?

In her dissent in *Metro Broadcasting*, Justice O'Connor argued that the FCC's asserted interest in minority ownership as a means of increasing diversity of broadcast viewpoints was not a compelling interest. In making her argument, she took issue with the manner in which the government defined, measured and assessed the existence of such diversity. In the absence of significant empirical data, she also questioned whether a nexus could be established between racial or ethnic identity and viewpoint or between a station owner's race and viewpoint. Finally, she questioned whether a station owner's racially related viewpoint would find expression if unsupported by the local market, even if both questions of nexus were answered in the affirmative.

#### 1. The Definition, Measurement and Assessment of Viewpoint Diversity

In *Metro Broadcasting*, Justice O'Connor questioned whether the government could adequately define or measure a viewpoint<sup>2</sup> associated with race or adequately assess the

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<sup>1</sup> We first wish to dispel the notion that the Law School's [diversity] argument has been foreclosed, either expressly or implicitly, by our affirmative-action cases decided since *Bakke*. It is true that some language in those opinions might be read to suggest that remedying past discrimination is the only permissible justification for race-based governmental action. But we have never held that the only governmental use of race that can survive strict scrutiny is remedying past discrimination.

<sup>2</sup> The term viewpoint is defined as another term for point of view. Point of view is defined as "a particular attitude or way of considering a matter." The term "view" is defined inter alia as: "a particular way of considering or regarding

diversity of broadcast viewpoints generally. As a consequence, there was no way to determine whether the asserted interest was warranted or for how long a policy based upon the interest would be justified.

While our research uncovered no studies specifically defining and analyzing “minority” or “ethnic” viewpoints per se, prior researchers have identified minority preferences<sup>3</sup> [demand side] for particular types and formats of programming.<sup>4</sup> Minority and ethnic preferences have historically been founded on the prominence of minority cast members, hosts, reporters and/or news anchors in programming; the prominence of identifiable minority artists and their works; and the articulation of minority perspectives on current events and issues of public importance. The latter preference may in fact be one for the articulation of viewpoints resonant with those of the audience.

On the supply side, the Bachen/Hammond/Mason/Craft study, surveyed minority, ethnic and majority-owned stations and found that minority and ethnically owned stations were more likely to choose a program format attractive to minority and/or ethnic audiences; were more likely to present a diversity of on air talent; were more likely to provide news and public affairs programming on events of particular concern to minorities and ethnic audiences; and more likely to tailor news stories to address minority concerns.

## **2. The Nexus between Racial Identity and Viewpoint Diversity**

Justice O’Connor concluded that underlying the equation of race and ethnicity with viewpoint is the assumption that a particular viewpoint is held by particular racial or ethnic groups and that a particular applicant, solely by virtue of their race or ethnicity is more likely to provide that desired viewpoint. Such an assumption, according to Justice O’Connor, constituted constitutionally impermissible racial stereotyping.

The research suggests that Justice O’Connor misstates the fundamental gist of what minority ownership can be expected to achieve. Rather than seeking to assure the existence of a particular race based viewpoint on the part of the station owner, what is in fact realized is a sensitivity to and appreciation for minority and/or ethnic preferences and viewpoints that allows for their articulation as part of the marketplace of ideas.

## **3. The Nexus between Station Owner Race and Viewpoint Diversity**

Justice O’Connor challenged the FCC’s assumption that a strong correlation existed between a station owner’s race and behavior and that the absence of minority views was directly correlated to the absence of sizeable numbers of minority owned stations. She

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something; an attitude or an opinion.” The New Oxford American Dictionary, (2001) at col. 2, page 1318 and col. 2, page 1883.

<sup>3</sup> The term “preference” is defined as “a greater liking for one alternative over another or others. The New Oxford American Dictionary, (2001) at col. 1, page 1344.

<sup>4</sup> For instance, the Siegelman/Waldfoegel study examined minority, ethnic and non-minority preferences in radio programming. The Wildman/Karamanis paper focuses on television viewer exercise of their taste for particular types of programming, and the affect the exercise of taste has upon program availability.

asserted that the "assumption is correct only to the extent that minority-owned stations provide the desired additional views, and that stations owned by individuals not favored by the preferences cannot, or at least do not, broadcast underrepresented programming."

The Siegelman/Waldfoegel study found that there is a nexus between the race or ethnicity of broadcast licensees and the content of the programming their stations provide. It highlights that most minority owners broadcast in a minority-oriented format, providing evidence that counters Justice O'Connor's concern in Metro Broadcasting that the FCC's association of minority ownership with minority programming is a stereotype.

In addition, the Bachen/Hammond/Mason/Craft study found that minority and ethnically-owned radio broadcasters are more likely than their majority-owned counterparts to provide news and public affairs programming on events of particular concern to minorities and ethnic audiences and to tailor news stories to address minority concerns.

#### **4. The Ability to Express A Racial or Ethnic Perspective in the Broadcast Market**

Finally, Justice O'Connor also questioned whether an owner's ethnically or racially motivated preferences would prevail against an owner's personal inclinations and/or market forces.

Here again, the research suggests that the Justice misstates and perhaps mistakes the dynamic at work. It is not necessarily owner preference for a particular point of view, but rather sensitivity to, appreciation for and willingness to seek out minority points of view that distinguishes minority broadcasters from most of their majority owner counterparts.

The authors of the Siegelman/Waldfoegel study hypothesize that the willingness to accept smaller returns could explain why greater black ownership increased black-targeted programming: additional black owners were willing to enter low-profitability market niches. However, there was insufficient station profit data available to allow an examination of the thesis. However, the Ivy Group study of the History of FCC Licensing to Minorities and Women provides anecdotal evidence of the commitment of minority owners to provide content responsive to their communities, even when they have more lucrative offers to sell their stations.

#### **I. Studies Addressing and Documenting the Nexus between Minority Ownership and Viewpoint Diversity**

The 1999 study, "Diversity of Programming in the Broadcast Spectrum," commissioned by the FCC and conducted by researchers at Santa Clara University, was an effort to address the concerns raised in Justice O'Connor's Metro Broadcasting dissent. Since that time, a limited number of studies have been conducted that address the issues raised by Justice O'Connor's dissent. An edited summary of the published findings and a brief discussion of the potential relevance of these reports beginning with the 1999 study has been provided below.

A. **Bachen, Hammond, Mason and Craft, Diversity of Programming in the Broadcast Spectrum: Is There a Link Between Owner Race or Ethnicity and News and Public Affairs Programming? (1999).**

Compelling Interest(s): Diversity of Station Ownership and Programming

Summary:

The study provides empirical evidence of a link between the race or ethnicity of broadcast station owners and contribution of broadcast stations to diversity of news and public affairs programming across the broadcast spectrum. The finding is stronger for radio than for television. A link was found for both radio and television between racial and ethnic composition of news room staff and contribution to spectrum diversity. Minority ownership and minority presence in the newsroom predicts a greater attention to topics of presumed interest to minority audience members.

Key Findings:

- Minority-owned radio stations were *far more likely to choose a program format that appeals particularly to a minority audience*;
- Minority-owned radio stations were *more likely to provide news and public affairs programming on events or issues of particular concern to minorities*;
- Minority-owned radio stations report *greater racial diversity of on-air talent*;
- Of radio stations that reported tailoring national news stories to the local community, minority-owned stations were *far more likely to tailor the story to minority community concerns*; and
- The same differences were not found in the case of television, and in most cases, including the areas noted above, there were no statistically significant differences between minority- and majority-owned television stations.

Methodology:

This study was based on survey data and used a sampling methodology that matched minority-owned stations with majority-owned stations without controlling for format. Additional research may be required to investigate the impact of format and provide further analysis of the impact of demographic and economic data.

## Relevance to Compelling Interest:

The study was designed to examine whether there is evidence that shows that there is a nexus between the race or ethnicity of broadcast licensees and the content of the programming their stations provide. The study also asks whether promoting a greater diversity of racial and ethnic groups among owners creates a greater diversity of programming on the airwaves. Given the First Amendment values behind the diversity rationale, the study focuses on speech that courts have held to be at the core of the First Amendment's protections: news and public affairs programming. In this regard, the study also examines whether the race or ethnicity of station owners affects the quantity of public affairs programming and whether it impacts the likelihood of stations to cover particular issues.

## Definition, Measurement and Assessment

The study addresses the O'Connor dissent's measurement and nexus concerns. First, it provides a relatively non-intrusive way of ascertaining broadcaster responsiveness to minority or ethnic audience viewpoints by asking the broadcasters themselves. Minority and ethnic radio broadcasters were far more likely to choose a program format that appeals to a minority or ethnic audience and to provide news and public affairs programming of particular concern to minority or ethnic audiences. They were more likely to hire diverse on-air talent and more likely to tailor their news stories to minority community concerns. In short, minority and ethnic radio station owners were more likely to program to minority or ethnic audiences, provide news and public affairs information responsive to the audiences' needs, hire more diverse staffs and tailor national news stories to minority or ethnic community concerns.

## The Nexus between Racial Identity and Viewpoint Diversity

With regard to whether a nexus exists between racial identity and viewpoint, the research suggests that Justice O'Connor misstates the fundamental gist of what minority ownership was expected to achieve. Rather than seeking to assure the existence of a particular race based viewpoint on the part of the station owner, what was in fact sought is a sensitivity to and appreciation for minority viewpoints that allowed for their articulation as part of the marketplace of ideas. The research suggests that this goal has been accomplished. Minority and ethnic radio station owners were significantly more likely than their majority counterparts to program to minority or ethnic audiences, provide news and public affairs information responsive to the audiences' needs and tailor national news stories to minority or ethnic community concerns.

## The Nexus between Station Owner Race and Viewpoint Diversity

The Justice questioned the extent to which "minority-owned stations provide the desired additional views, and that stations owned by individuals not favored by the preferences cannot, or at least do not, broadcast underrepresented programming." Absent such proof, assertions of the existence of a nexus remained unsupported and hence, suspect. The

research clearly shows that for radio, there is a nexus between minority and ethnic owners' sensitivity to and responsiveness to minority and ethnic audiences. And, that the sensitivity and responsiveness is not reflected to a comparable degree in their majority counterparts. Minority and ethnic radio station owners were significantly more likely than their majority counterparts to program to minority or ethnic audiences, provide news and public affairs information responsive to the audiences' needs and tailor national news stories to minority or ethnic community concerns.

#### The Ability to Express A Racial or Ethnic Perspective in the Broadcast Market

The research suggests that the Justice misstates and perhaps mistakes the dynamic at work. It is not necessarily owner preference for a particular point of view, but rather minority owner sensitivity to, appreciation for and responsiveness to minority points of view that distinguishes minority broadcasters from most of their majority owner counterparts.

- B. **Mason, Bachen & Craft, *Support For FCC Minority Ownership Policy: How Broadcast Station Owner Race Or Ethnicity Affects News And Public Affairs Programming Diversity*, Communication Law and Policy, 2001, Vol. 6, No. 1, Pages 37-73**

Compelling Interest(s):      Station and Programming Diversity

#### Summary:

The article details an investigation of the relationship between the race or ethnicity of broadcast station license-holders and the contribution those stations make to diversity of news and public affairs programming. Several federal policies favoring minority ownership of broadcast licenses assumed such a relationship yet empirical evidence of the link was limited.

*This article is a republication of the findings of Bachen, Hammond, Mason and Craft, Diversity of Programming in the Broadcast Spectrum: Is There a Link Between Owner Race or Ethnicity and News and Public Affairs Programming? (1999) by three of the four authors.*

#### Key Findings:

A number of indications support a conclusion that race or ethnicity of a broadcast station's owner has a measurable and meaningful influence on the diversity of programming aired in the markets in which the station operates.

Minority owned radio stations cover more topics presumed to be of interest to ethnic or racial minority audiences. The entertainment format for minority-owned stations is

geared more toward minority audiences. This emphasis reflects the greater attention given to these audiences by minority-owned radio stations.

For both television and radio, the percentage of minority news and public affairs staff at a station positively correlates with such programming as well.

#### Methodology:

A nationwide telephone survey of 209 news directors at radio and television stations reveals that minority-owned radio stations emphasize issues of presumed interest to minorities more than do the majority-owned counterparts.

#### Relevance to Compelling Interest(s):

Whether such social scientific evidence could effectively support a return to minority preference policies is discussed in light of the current legal climate, which strongly disfavors discrimination, however benignly intended, on the part of government.

See above discussion of relevance regarding Bachen, Hammond, Mason and Craft, Diversity of Programming in the Broadcast Spectrum: Is There a Link Between Owner Race or Ethnicity and News and Public Affairs Programming? (1999).

#### **C. Craft, Translating Ownership into Action: Owner Involvement and Values at Minority- and Non-Minority-Owned Broadcast Stations, (2002)**

Compelling Interest(s): Station Ownership and Programming Diversity

#### Summary:

Research demonstrating a link between minority ownership of broadcast stations and news and public affairs programming diversity also includes the counter-intuitive finding that owner involvement in station activities is not related to that link. This article examines 3 other mechanisms that may mediate the relationship between ownership and programming: staff perceptions of shared values with the owner, the owner's direct communication of values to the staff, and hiring.

This dissertation uses the same database which provides the basis for the findings of Bachen, Hammond, Mason and Craft, Diversity of Programming in the Broadcast Spectrum: Is There a Link Between Owner Race or Ethnicity and News and Public Affairs Programming? (1999). The dissertation is published by one of the four authors.

## Key Findings:

Results of a telephone survey of people directly responsible for news at minority- and non-minority-owned stations suggest that *owner involvement predicts the extent to which the staff perceives an owner's values to be their own, as well as the likelihood that the owner will overtly communicate his or her values to the staff.*

*Owner involvement was not found to be a significant predictor of hiring of staff who are members of minority groups.*

The study concludes that owner involvement affects (a) the extent to which a station's employees perceive their values to be similar to the values of the station owner and (b) whether the owner is the primary communicator of news values to employees.

## Methodology:

A telephone survey of minority- and majority-owned commercial broadcast stations regarding their news and public affairs programming and practices was conducted in the summer and fall of 1998 as the primary means to address questions about the relationship between ownership and programming.

## Relevance to Compelling Interest(s):

This study has implications for efforts to increase minority participation in broadcasting specifically and workforce diversity in journalism more generally. It supports a conclusion that minority owners are more likely to communicate their values to employees and have an impact upon hiring staff with similar values. This conclusion supports and in turn is bolstered by the findings in *Bachen, Hammond, Mason and Craft, Diversity of Programming in the Broadcast Spectrum: Is There a Link Between Owner Race or Ethnicity and News and Public Affairs Programming? (1999).*

The study supports the asserted nexus between minority ownership and station programming diversity as manifest in the ability of minority owners to communicate their values to staff who then translate those values into responsive programming.

### **D. Minneapolis-St. Paul News Coverage of Minority Communities (2002) Study Report**

<http://www.usccr.gov/pubs/sac/mn1203/summ.htm>

## Compelling Interest: Station Ownership and Viewpoint Diversity

### Summary:

In 2002, the Minnesota Advisory Committee held a fact-finding meeting to elicit data, perspectives, and opinions about the Twin Cities news coverage of communities of color. The meeting, which was open to the public, included a session in which the public could

provide testimony. In addition, all affected groups were invited to participate as panelists. Most of the information presented in the report was derived from the fact-finding meeting, however, the report also included information gathered by regional staff through interviews and secondary sources.

### **Coverage of Communities of Color**

While the Committee had difficulty coming to a strong conclusion regarding how well the local news media cover communities of color, many panelists believed that the local news media lacked ideological balance in their stories. In addition, the committee concluded that the perspectives of communities of color were often not included in news stories. The lack of coverage was also found in a study cited that concluded coverage of Hispanic communities has improved qualitatively in recent years, but quantitatively, the coverage is still sparse.

### **Diversity of Journalists, Editors, and Management**

One of the observations of the 1993 report regarded the under representation of people of color working for Twin Cities news media stations and papers. Most glaringly, hardly any people of color held high-level positions, including editors, news directors, and other management positions. The report found "no evidence that [people of color] are employed in positions that influence the editorial and publishing policies of the business."

In this current study, the Committee heard testimony of the importance of having a diverse workforce in news media production.<sup>5</sup> While Committee found that the diversity of the Twin Cities news staffs had improved between 1992 and 2002, there were still relatively few people of color holding positions where they influence the editorial and publishing decisions in local news media.

### **Conclusion**

Although there may have been some disagreement regarding specific findings and recommendations, all Committee members and presenters at the fact-finding meeting, whether they were members of the mainstream news media, community press, or the local neighborhoods, agreed that coverage of communities of color could be improved.

### **Key Relevant General Findings and Recommendations**

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<sup>5</sup> "For instance, Minnesota is an increasingly diverse state with its population of Hispanics and blacks increasing 166 percent and 80 percent, respectively, since 1990. Although within these communities themselves there is great diversity, most presenters at the meeting stated that members of minority groups provide deeper understanding of these communities. Another example occurred in the aftermath of the September 11, 2001, attacks when some news media outlets found themselves unprepared to cover the Arab and Muslim communities of the Twin Cities. This event highlighted the importance of having diverse staffs. Those news outlets that had employees who were members of these communities were better prepared to cover these groups."

## ***Findings***

Twin Cities residents rely to a large extent on the local news media for their understanding of diverse communities. Residents often learn about other races, cultures, and religions through their exposure to local news media. Therefore, the news media play a vital educative role and must pursue this role in a non-stereotypical manner.

Many people testified and some evidence was presented to conclude that explicit racial stereotyping is not as problematic as it was in 1992. However, the coverage of communities of color continues to be compromised because the communities' perspectives are oftentimes not given equal consideration. In addition, less explicit stereotyping still occurs. Some evidence implies that although quality of coverage has improved, quantity of coverage is lacking.

Diversification of newsrooms and management is vital to improving coverage of communities of color. The burden of diversifying news media staffs, especially management and editorial staffs, falls on the news media outlets themselves. The Minnesota Advisory Committee notes that the local news media have made concerted efforts to recruit people of color, and it recognizes the difficulties inherent in recruiting diverse people to the Twin Cities. Although quantitative progress was presented regarding the diversification of newsrooms, the local news media have not adequately diversified their management staffs.

### **Key Relevant Recommendations**

News media management staffs must be diversified. People of color need to have input regarding what is news in the Twin Cities. In addition to improving the coverage of communities of color, diversifying management may also ease the difficulties local news media experience recruiting and retaining people of color.

Local news media and local journalism scholars should analyze the news that is presented to Twin Cities residents. More studies need to be conducted to decipher both the quality and quantity of news coverage of communities of color.

The Federal Communications Commission and/or the U.S. Commission on Civil Rights should thoroughly study the effects of deregulation measures on local communities and specifically communities of color. These studies should take place before any further deregulation measures are enacted.

### **Twin Cities Television and Radio News: Findings**

News departments at commercial television and radio stations are at a distinct disadvantage in covering communities of color accurately and comprehensively compared with newspapers, public television, and public radio. The shorter segments of commercial television and radio news broadcasts do not allow for thorough reporting of complex issues. Thus, traditional stereotypes held by the public may persist.

The "window dressing" mentality of television news is still prevalent. Based on testimony at the fact-finding meeting, there are currently no people of color serving in high-level management positions at Twin Cities television news stations.

The Federal Communications Commission no longer publishes employment reports for the broadcast and cable industries, making it difficult to assess the diversification of the television news industry.

### **Recommendations**

Television news directors must pay closer attention to the interests and concerns of communities of color. When given the opportunity to interact and dialogue with community leaders and representatives, television station managers and news directors should participate. Through interaction and dialogue, television news media and communities of color can begin to understand each others' concerns.

The number of people of color employed at local television news stations in decision-making positions has not grown since the early 1990s. Television news stations must take responsibility for this fact and diversify their management staff.

The Federal Communications Commission should once again publish employment information for the broadcast and cable industry, particularly now that the number of owners is decreasing.

### **Relevance to Compelling Interest Analysis:**

The Committee concluded that as the state of Minnesota's population continues to become more diverse the news media play a vital educative role.

Twin Cities residents rely to a large extent on the local news media for their understanding of diverse communities. Residents often learn about other races, cultures, and religions through their exposure to local news media. Therefore, *the news media play a vital educative role* and must pursue this role in a non-stereotypical manner.

However, despite increased diversification of news staff at local newspapers, there is still an absence of greater diversification of management staff at local newspapers, radio and television stations. While the Committee did not make an explicit connection between the absence of management diversification and coverage of communities of color, it did note that: "the coverage of communities of color continues to be compromised because the communities' perspectives are oftentimes not given equal consideration." The strength of the connection should be qualified by the concurrent observation that "[t]he shorter segments of commercial television and radio news broadcasts do not allow for thorough reporting of complex issues." Nevertheless, the Committee did conclude that:

People of color need to have input regarding what is news in the Twin Cities. In addition to improving the coverage of communities of color, diversifying management may also ease the difficulties local news media experience recruiting and retaining people of color.

This lead the Committee to recommend that:

Television news directors must pay closer attention to the interests and concerns of communities of color. When given the opportunity to interact and dialogue with community leaders and representatives, television station managers and news directors should participate. Through interaction and dialogue, television news media and communities of color can begin to understand each others' concerns.

The findings and recommendations of the Committee are consistent with the findings in Bachen, Hammond, Mason and Craft, Diversity of Programming in the Broadcast Spectrum: Is There a Link Between Owner Race or Ethnicity and News and Public Affairs Programming? (1999). In the absence of minority management and ownership, there is less sensitivity to minority and ethnic viewpoints in the Twin Cities media. Given broader community reliance on electronic news media for such viewpoints and perspectives, the limited nature of such sensitivity has an adverse impact on minority and majority segments of the community of license.

**E. Joel Waldfogel, Who Benefits Whom in Local Television Markets?  
The Wharton School University of Pennsylvania and NBER,  
November 15, 2001**

Compelling Interest: . Station Ownership and Viewpoint Diversity

**Summary:**

This paper examines the effects of the size and racial composition of local populations on the types of local programming offered, as well as on the welfare of various types of television viewers. We find that, as in other media, television programming preferences differ sharply between blacks and non-blacks, and between Hispanics and non-Hispanics. We show that the targeting of local programming to minority viewers is much greater in markets with larger minority populations, whereas prime time and national cable programming are, by definition, insensitive to local preference distributions. We document that the quantity of locally controlled minority-targeted television draws minority viewers to viewing. Together, these relationships imply that blacks and Hispanics are better off, in their capacity as television viewers, in markets with larger black and Hispanic populations.

**Research Premise:**

When production carries substantial fixed costs, it is well known that larger markets can offer more, and more varied products. Ensuing broader product options increase consumer welfare by offering more types of consumers options they prefer; and product variety draws a higher fraction of residents to consumption. In this sense people can benefit each other in their capacity as fellow product consumers. But who benefits whom? You will benefit me only to the extent that you bring forth products that appeal to me which, in turn, will occur only if we share similar preferences.

## Key Relevant Findings

Blacks and whites (and Hispanics and non-Hispanics) have substantially different preferences in media products. The radio formats attracting two thirds of black listeners collectively attract less than 5 percent of white listening (Waldfoegel, 1999; Siegelman and Waldfoegel, 2001).

Local markets with larger black populations have more black-targeted radio stations and daily papers that cater more to black consumers' tastes. Moreover, blacks are more likely to consume local radio and daily newspaper products in markets with more heavily black populations. As a consequence, blacks and whites are better off, in their capacity as local media consumers, as their markets have larger black and white populations, respectively.

The scope for tyrannies of the majority to operate in markets is larger, the higher are fixed costs relative to market size. This is why black and white consumers affect each other more in daily newspaper markets, with only a handful of products per market, than in local radio markets, averaging 25 stations per market.

Unlike daily papers and radio, which are predominantly local media, television is a mixed local/national medium. Most programming, including network prime time and almost all cable channels, is uniform across place. However, outside of prime time, local broadcast stations, including both independent stations and affiliates of networks (such as ABC, CBS, or Fox) determine much of their programming locally. The latter set of programming decisions allow a mechanism for television consumers to affect their fellow local residents. Yet, given widespread availability of a large number of specialized national cable (and satellite) channels, it is not clear whether local viewers' welfare depend on local programming decisions. Rather, specialized national channels may satisfy diverse tastes, leaving little scope for local programming decisions to incrementally affect welfare. Distributional effects in television, which is perhaps the most influential news, information, and entertainment medium in the US, remain to be studied. Americans spend on average more time with television than with other media, and a much higher fraction of households watch television than read local newspapers.

In local media markets, the welfare of consumers in each preference group depends on the distribution of product-preferring types in the market. Mounting evidence that minority consumer welfare depends on local minority population in local media markets indicates that, for this industry at least, the difference between market and collective choice allocation is a matter of degree, not kind. Blacks and whites, and Hispanics and non-Hispanics, prefer different television programming.

Markets with higher minority shares have larger amounts of minority-targeted programming. Minorities derive more satisfaction from television – inferred from their greater tendency to watch – in markets with more minority-targeted programming. Hence, one can infer that raising the black or Hispanic share of *local* population will raise the welfare of *local* blacks, in their capacity as *local* television consumers. In this section we examine this relationship directly.

Broadly, there are two ways of examining the relationship between population composition and welfare (as implied by viewing). First, we can examine the relationships between each group's viewing and population composition. We term this the "simple cross section approach." Thus, for example, we can examine the cross-market relationship between black viewing and the share of *local* population that is black. A possible shortcoming of that approach is that some unobserved characteristic of the market may be correlated with both the population composition and the tendency for persons to watch television.

These results confirm that blacks benefit blacks (relative to their effect on whites). Moreover, Hispanics benefit Hispanics (relative to their effects on non-Hispanics) in these specifications. Effects are larger for blacks than for Hispanics. As in other media, the welfare of minority television viewers with distinct preferences depends on their neighbors. The presence of a substantial variety of cable channels makes this dependence of *local* resident's welfare on their neighbors surprising. If cable did not exist, one might expect stronger dependence on minority viewers' welfare on their neighbors' preferences. While we cannot examine a world without cable, we can ask whether this dependence is stronger for viewers without cable. We explored this possibility and found no stronger dependence of group viewing on population composition among those without cable connections. Of course, given the endogeneity of cable connection, it is not entirely clear what one might make of such regressions in any event.

## Conclusion

A growing body of evidence shows that, when preferences differ across audience groups, the satisfaction of *local* media consumers depends on the size of their groups' *local* populations. This relationship has been documented in prior research for *local* radio and daily newspaper markets. The present study documents that this relationship holds, particularly for blacks, in *local* television markets as well. In particular, the study's authors as document:

that television programming preferences differ sharply between blacks and non-blacks, and between Hispanics and non-Hispanics. Although whites face fewer white-targeted segments in heavily black markets, they nonetheless face a large amount of white-targeted programming.

the quantity of group-targeted programming is larger in markets with more minorities (proportionately more for blacks, absolutely and proportionately more for Hispanics);

minority viewing of network affiliates increases in their quantity of minority-targeted programming; and

minority viewing (and, one can infer, viewer welfare) depends on the distribution of one's neighbors' tastes.

#### Relevance to Compelling Interest Analysis:

This study supports the assertion that there are indeed minority and/or ethnic programming preferences shared by minority and/or ethnical audiences that measurably distinct from majority population programming preferences.

The study also finds a relationship between the size of the minority or ethnic market and the amount of minority or ethnically oriented programming presented in the market. That is, as the minority or ethnic population of the area of license grows the amount of minority or ethnically oriented programming presented grows. These findings could be viewed as supporting a conclusion that minority and ethnic market demand fueled by population growth is sufficient to drive responsive programming.

However, it does not address the extent to which majority-owned as opposed to minority or ethnically owned radio or television stations present such programming within the markets in question. Moreover, the study relies on a gross measure of program preference combining entertainment with other types of programming. It does not appear to distinguish between programming falling within established formats and genres and news and public affairs programming sensitive to and/or expressing the viewpoints of the majority or ethnic population.

In addition, the study does not take into account the history of the development of the market demand for minority or ethnic oriented programming and presumes that the development of demand and the response thereto is strictly a matter of population growth and entrepreneurial response. The historical evolution of broadcaster sensitivity to the programming desires of minority and ethnic audiences including majority owned broadcaster indifference and/or discrimination; government enforced ascertainment of community needs and interests (including those of racial and ethnic minorities); the market impact of minority broadcast entrepreneurs (many of whom developed but no longer serve minority and ethnic markets because they have sold their stations); and the continuing unmet demand for balanced and non stereotypic coverage evident in some markets (for example the Twin Cities), are not represented in the data or findings.

**F. Peter Siegelman, Joel Waldfogel, Race and Radio: Preference Externalities, Minority Ownership and the Provision of Programming to Minorities (2001), [www.fcc.gov/ownership/roundtable-docs/waldfogel-c.pdf](http://www.fcc.gov/ownership/roundtable-docs/waldfogel-c.pdf) also published in Advances in Applied Microeconomics, Vol. 10, 2001.**

Compelling Interest(s):      Diversity of Station Ownership and Programming - Narrow Tailoring.

## Summary:

The study examines the preferences of blacks and Hispanics vs. non-minorities in radio programming. The authors examined stations targeting black and Hispanics and found that most were white-owned. They found that minority ownership increases the net amount of minority-targeted programming. Even though most minority-targeted stations are white-owned, markets with more *minority-owned* stations also have more minority-targeted stations; minority-owned stations add to the total programming available to minority listeners.

They also found that minority vs. non-minority listeners have very different programming preferences. This resulted in an under-provision of programming to black and Hispanics. They found that the amount of local minority-targeted programming depends on the size of the minority, but not the white, population.

## Key Findings:

- While the average number of Black-owned radio stations in their dataset of 244 markets fell by 15.4% between 1993 and 1997, the average number of stations broadcasting programming targeted at black audiences increased by 27 percent from 1.5 in 1993 to 1.9 in 1997. Hispanic targeted stations grew 57% from 0.68 to 1.07 per market average, while Hispanic station ownership increased from an average of 0.55 per market studies to 0.65;
- By and large, blacks listened to black format stations, whites listened to white format stations, and Hispanics to Hispanic format stations. They note this is a similar pattern found for black vs. white television viewership. Between September 21 and November 29, 1998, the top 5 network television shows among whites ranked 118<sup>th</sup>, 124<sup>th</sup>, 7<sup>th</sup>, 118<sup>th</sup> and 10<sup>th</sup> respectively among black viewers. The authors also note that blacks listened to radio more than whites.
- Black-targeted formats attracted 61 percent of all black listening, but only 3 percent of white listeners. Spanish-language programming attracted 45.7 percent of Hispanic listening. Each group's listening depended strongly on the stations targeted at it.
- The market's minority population determined the number of minority-targeted stations. The market provided fewer stations for racial and ethnic minorities relative to whites because the minority groups were less numerous. Minorities were underserved relative to whites;
- The study found that almost all minority-owned stations broadcast minority-targeted content. Of 139 black-owned stations in 1997, all but 23 were in the six black-targeted formats. Of those 23 stations, 8 were in formats that attracted substantial numbers of black listeners-Jazz, Contemporary Hit Radio

(CHR) or Urban. Consequently, 90 percent of black-owned stations broadcast to a substantially black target audience.<sup>6</sup>

- Most black-targeted stations were white-owned, controlling 169 (72%) of the 236 stations broadcasting in the Black formats. However, there were differences by format. While whites owned 90 of 107 stations in the Black/Adult Contemporary format, they owned only 1 of 6 Black/Talk stations. This may be significant for the impact of black ownership on news and public affairs content;
- Conducting a regression analysis, the authors found that each additional minority-owned station beget roughly one additional net source of minority-targeted programming. This suggests that minority-owned stations do not simply replace white-owned, minority targeted stations, but increase the amount of minority-targeted programming;
- The authors conclude that even though white owners commonly provide black-targeted programming, black owners enter in situations that white owners avoid.
- White-owned black-targeted stations had more listeners on average (6,840) than black-owned, black-targeted stations (4,970).<sup>7</sup> Hispanic-owned and Hispanic targeted stations had an average of 5,850 listeners, while non-Hispanic-owned stations targeting Hispanics had an average of 6,030.
- The authors hypothesize that black owners' willingness to accept smaller returns could explain why greater black ownership increased black-targeted programming: additional black owners are willing to enter low-profitability market niches. However, they do not examine this thesis because of lack of profit data;

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<sup>6</sup> Note that the FCC's Advertising study reported that some station owners changed their format label from black to Urban or from Urban to CHR (as the Urban format became increasingly associated with black-targeted programming), to avoid stereotypes or minority dictates or discounts.

<sup>7</sup> The authors did not examine the differences in signal strength or station class between minority and non-minority owners. Given the historical allocation process, access to capital differences and other issues, minorities often acquired smaller signals. It would be interesting to examine whether minority or non-minority owners with lower strength or class signals attracted more minority listening than their signal would predict relative to larger signals owned by non-minorities.

- The study points to the advent of CD Radio and the Internet as alternatives that might allow minorities to access programming when they are living in communities too small to support their preferences.<sup>8</sup>

#### Methodology:

The authors examined 244 radio markets, comparing data for 1993 and 1997. This encompassed 5,219 radio stations in 1993 and 5,990 radio stations in 1997. They observed black listening in 75 metropolitan areas in 1993 and 99 markets in 1997, and Hispanic listening in 31 market in 1993 and 51 markets in 1997. Data was gathered from Duncan's American Radio and Arbitron's Radio USA, using Arbitron's average quarter hour as the listening measure. They obtained owner race information from the National Telecommunications and Information Agency reports.

#### Relevance to Compelling Interest:

The study shows that there is a nexus between the race or ethnicity of broadcast licensees and the content of the programming their stations provide. It highlights that most minority owners broadcast in a minority format, providing evidence to counter Justice O'Connor's concern in Metro Broadcasting that the FCC's association of minority ownership with minority programming is a stereotype.

Moreover, they demonstrate that minority owners make a difference in the amount of minority-targeted programming provided. Even though most minority-targeted programming is provided by non-minorities, their regression analysis showed that each additional minority-owned station produced roughly one additional net source of minority-targeted programming. This suggests that minority-owned stations do not simply replace white-owned, minority targeted stations, but increase the amount of minority-targeted programming. This provides evidence of the link between diversity of racial and ethnic group ownership and greater diversity of programming on the airwaves. It addresses both the compelling state interest in promoting minority ownership – promoting diversity of viewpoints, and narrow tailoring. Viewpoint diversity would not simply be achieved through race-neutral programs to promote format diversity or by the free-market. Rather, viewpoint diversity is enhanced by minority ownership which increases minority programming.

Their study also indicates that minorities may be served differently by minority ownership than majority ownership. While this theory requires further research, they hypothesize that minorities may be willing to provide programming targeting minority communities in situations where non-minorities are not.

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<sup>8</sup> However issues of cost, access, mobility and custom, make new media an imperfect substitute for free, over-the-air radio broadcast.

**G. Economics of Minority Programming, Steven Wildman, Theomary Karamanis, The Aspen Institute, 1997,  
<http://www.aspeninstitute.org/Programt3.asp?bid=560&i+56>**

Compelling Interests: Diversity of Programming, Narrow Tailoring

Summary:

The paper analyzes whether the U.S. television industry undersupplies programming that would be beneficial to members of minority populations. They base their analysis on an economic model that shows that large blocks of viewers with similar tastes exert inordinate influence on program supply, and make it more profitable for broadcasters and advertisers to serve the large block than an identifiable minority block. Until the number of outlets or the size of the minority block increases, a broadcaster will find it more profitable to show programs targeted at the majority (assuming that minorities will watch majority-oriented programming instead of turning off the tv), than to broadcast to the minority. They argue that audience wealth increases this skew where the majority is wealthier and advertisers prefer an audience with more resources to buy products. They also argue that the lack of provision of minority programming leads to lack of information about the effectiveness of such programming, which discourages its production or broadcast. They argue for increasing information available about minority preferences in programming, effectiveness of advertisers messages by group, and product consumption and purchase patterns to increase broadcasters' and advertisers' knowledge and incentives to provide programming to minorities. They question whether minority ownership would increase minority programming unless minority owners have a comparative advantage in providing minority programming or are willing to earn fewer profits. They suggest that non-minority owners can simply hire minority talent to produce programming that will attract minorities, but do not test these hypotheses regarding the difference minority ownership makes. They argue for market-based programs to increase minority programming, and note that minority ownership has grown slowly, so it should not be relied upon to increase minority programming.

Key Findings:

- According to Peter Steiner's model developed in 1952, broadcasters will provide programming which appeals to majority group members of the audience until the number of outlets increases or the percentage of the minority audience increases. In a market of 100 viewers with an identifiable minority group of 12 people and the remaining 88 constituting a relatively homogenous majority, if there are only 8 stations, each will attract the most viewers ( $100/8=12.5$ ) by providing programming targeted at the majority (if we assume that viewers will watch the programs types they do not prefer if the only option is not watching.) Only when the 9<sup>th</sup> station is added would at least one station find it profitable to provide programming to the minority ( $100/9=11.5$ ). With 9 broadcast outlets, one station could attract more viewers by targeting programming at the minority than by adding to the stock of majority programming.

- Advertisers do not view all audiences in the same way; they prize audiences with higher incomes or wealth. If minority group incomes or wealth are lower (or are perceived to be), this exacerbates the tendency to overprovide programming to the majority and underprovide it to the minority.<sup>9</sup>
- This model suggests that as the number of outlets increase, diversity of programming should increase. Despite the increase in media outlets with the advent of cable and satellite channels, the amount of programming for minority audiences has fallen short of expectations. The authors attribute this to the larger revenue obtained from viewer subscriptions and advertiser support for majority programs which stimulates an oversupply of majority programs.
- Larger markets increase the economic viability of more expensive media products. This may also affect viewer selection because many viewers appreciate shows supported by more production resources as evidenced in the end product.
- Lack of minority programming also limits audience feedback about the type of programming minorities prefer. Particularly when minorities are willing to watch majority-oriented programming, broadcasters may find it easier to continue to supply those programs, and won't get information on response to minority programming. If advertisers find it cost effective to reach minority viewers through commercials placed in majority programs, they have no incentive to push for minority programming.
- The authors theorize that advertisers would push for more minority programming if minority viewers did not watch majority programs, if minority viewers purchased different products and services than majority viewers, or if for the same products and services, different messages were required to motivate purchases by majority and minority consumers. They argue for market-based solutions to improve the quality of market knowledge regarding the program preference of minority audiences, whether minorities respond to different messages about products, and minority consumption patterns.<sup>10</sup> They believe that more objective information on minority preferences would increase the ability of

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<sup>9</sup> An advertiser's desire to disassociate its product from minorities or keep minorities out of their place of business may also influence decisions about where to place advertising. See Ofori Study on Minority-owned and Formatted Radio Stations, and Ivy Group Study of a Historical Overview of FCC licensing.

<sup>10</sup> The authors do not acknowledge the substantial research available on minority consumption and effectiveness of message communications. Much of this research is commissioned by advertising agencies or firms representing broadcasters. Ofori's study of advertising practices indicates that advertisers discount such studies, often believing their own preconceived ideas about minority preferences over data regarding product consumption by race and ethnicity.

programmers to respond to minorities, and advertisers' incentives to push for programs that cater to minorities.

- The authors note that FCC initiatives to increase the supply of minority programs have promoted minority ownership of media outlets. They posit that if minority owners are more likely to broadcast minority programs or do a better job of developing programs for minority audiences, then the dearth of minority ownership could be a factor accounting for underprovision of minority programming.
- Examining the economic incentives, minority owners would be more likely to provide minority programming if they found it more profitable (their expertise gave them a comparative advantage that translated into profit) or were more willing to sacrifice profit to ensure more minority programs were allowed. The authors do not study these incentives. However, they question whether a non-minority owner could not accomplish the same profits by hiring minority talent to produce programs. If doing so did not equalize profits, then minority owners might have a comparative advantage based on their communication with employees (or their values or willingness to obtain lower profits).
- They review some of the studies examining the nexus between minority ownership and programming. They raise methodological questions about the Congressional Research Services 1988 study "Minority Broadcast Station Ownership and Broadcast Programming: Is there a Nexus?" They point to Professor Spitzer's argument that the CRS study lacked a definition of minority programming and that all data were self-reported by licensees. They believe the evidence to date (1997) on the nexus between minority ownership and programming was not conclusive. They also argue that minority ownership alone should not be relied upon to increase minority programming, given the slow pace of growth (and retrenchment) or minority ownership.

### **Relevance to Compelling State Interest:**

This study examines some of the economic incentives that limit diversity of programming. Broadcasters have an incentive to target their programming to majorities and limit their programming to minorities to attract larger audiences. This tendency increases when the number of broadcast outlets is small. Moreover, when the number of broadcast outlets increases, minority programming has not increased as the economic model would have predicted. Differences in wealth between minority and non-minority audiences may in part explain advertisers' preference for majority programming to wealthier audiences. They argue that the size of the majority continues to wield an inordinate influence on programming decisions. This is true even when you can aggregate audiences across regions or nationally through cable, satellite or broadcast affiliations.

This analysis could provide a non-discriminatory, economic based reason for the underprovision of minority programming. However, the authors do not discuss the extent to which discrimination or stereotypes in perceptions of minority audiences play into advertisers' or broadcasters' decisions regarding programming.

To develop incentives "narrowly tailored" to increase minority programs, the authors suggest the development of more information about minority audiences; their program tastes, product and service consumption and responsiveness to advertising messages. The authors do not address the information currently available on these preferences, and advertisers' response to that information. The persistence of "No Urban/Spanish dictates" and "minority discounts" in the face of information showing higher minority consumption of certain products and responsiveness to targeted advertising could show that merely increasing market information may not shift programming to minorities, especially where some biased advertisers or broadcasters discount that information. Additionally, broadcasters targeting the majority would have an incentive to argue that advertisers do not need to place ads on minority-oriented stations, where they can argue that some minorities watch their stations, and that their viewers have higher incomes and would be a better advertising "buy." The authors' economic model also suggests that majority-format stations will form first and have more resources because they serve the majority. This may increase their production resources, and ability to attack other competitors, particularly one differentiated by the audience it serves.

The authors question the nexus between minority ownership and minority programming but do not systematically examine it. They raise the possibility that minority owners have a comparative advantage in providing programming to minorities, an advantage which majority owners can't overcome simply by hiring minorities. The Hammond/Bachen study of the nexus between minority ownership and news and public affairs programming shows that minority ownership made a difference in content. The Hammond/Bachen study was published three years after this article.

Wildman and Karamanis also question whether minorities are willing to make lower profits than non-minorities, but do not examine this hypothesis. The Ivy Group study of the History of FCC Licensing to Minorities and Women provides anecdotal evidence of the commitment of minority owners to provide content responsive to their communities, even when they have more lucrative offers to sell.

Nor does the Wildman/Karamanis study examine the extent to which capital markets are willing to fund minority broadcasters to serve minority audiences, but may be less willing to capitalize minority broadcasters competing for majority audiences. If this were true, it might indicate that capital markets recognize the comparative advantage minority owners have in providing content relevant to minority audiences, or the opportunity to capture an underserved market. As more minority-targeted programming is provided by non-minorities, it will be important to examine the response of capital markets to funding potential minority owners wanting to broadcast to minorities.

## **Competition and Diversity of Broadcast Ownership**

**Ian Ayres and Peter Cramton, Deficit Reduction Through Diversity: How Affirmative Action at the FCC Increased Auction Competition, 48 Stan. L. Rev. 761 (1996).**

### **Compelling Interest(s):**

Eliminate Capital Access Barriers in FCC licensing proceedings that incorporate capital access as a determinant of success.

Increase competition and diversity of ownership.

Narrow Tailoring: The effectiveness of programs that provide incentives for minorities and women to compete for all licenses.

### **Summary:**

Ayres and Cramton studied the FCC's Regional Narrowband Paging auction for 30 licenses conducted in 1994. The authors conclude that bidding preferences for minority and women small businesses increased competition and auction revenues by 12%, yielding \$45 million in additional revenues. In that auction, the FCC allowed small businesses to pay for the licenses through installment payments over 10 years at a favorable interest rate. For ten licenses, "designated bidders," companies controlled by minorities or women, were able to use a 40 percent bidding credit. Small businesses controlled by minorities and women had to pay only 50 percent of the winning bid. This created extra competition and induced unsubsidized firms to bid higher because they had fewer licenses for which to compete (the 40% bidding credit effectively set-aside 10 licenses for minority and women-owned firms). It also increased competition because large firms had to compete against minority and women-owned firms with installment payments who "crossed-over" to bid on non-set aside licenses.

This study shows that programs which encourage minority and women-owned business participation can increase competition, and that the market price being paid for these licenses may have been artificially low without that competition. Minorities and women bid up the prices in the "set-aside" block, effectively eliminating any benefit from the 40% bidding credit. However, one minority firm (Insta-check) was able to "cross-over" and acquire a license in the "non-set-aside" block by outbidding a large non-minority-owned firm.

### **Key Findings:**

- Bidding preferences for minority and women small businesses increased competition and auction revenues by 12%, yielding \$45 million in additional revenues;

- Participants within the block of licenses effectively reserved for minorities and women with the 40% bidding credit bid up the price of those licenses to the point where it became attractive for some of them to cross over and bid on the licenses for which only the installment payment subsidy was available.<sup>11</sup>
- Affirmative action bidding preferences may reduce government acquisition costs because firms without preferences will lower their prices to compete against firms with preferences. An unidentified source at the California Department of Transportation reported in a conversation with Ayres that affirmative action forced the price of winning construction bids to approach independent estimates of construction costs. The Department of Defense sometimes reimburses small bidders for certain bidding costs if it anticipates greater competition will lower the government's price;
- For FCC spectrum, capital markets may shy away from financing companies that did not already have significant prior industry experience, particularly for a new technology with unproven demand. This would limit competition to incumbents and opportunities for new entrants including minorities and women;
- Incentives for minority and women participation may reduce tacit collusion between bidders. In the Narrowband auction, minority and women bidders

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<sup>11</sup> Similar competition occurred in the Personal Communications Services (PCS) "C" block auction which offered bidding discounts and installment payments to small business participants, after the incentives for minority and women-owned firms were removed by the FCC in the wake of *Adarand*. The small business participants bid up prices so that the price benefits of the incentive programs were effectively eliminated. Prices paid for spectrum by population were higher than those paid by large businesses in the PCS "A and B" block license auctions. Since the C block auction was held separately from the A and B block auction (because of concerns that preferences for minorities and women would raise constitutional challenges to the auction and delay the licensing process for all of the businesses involved including large firms), there was no opportunity for minority, women or small businesses to "cross-over" and compete for licenses where only installment payments were available to them. The FCC could have created broader competition by holding auctions for the three PCS blocks simultaneously and allowing small firms to use installment payments for all licenses. That might have reduced price pressure within the C block reserved for applicants with extra bidding credits, and increased prices within the A and B block where competition may have been artificially low. It might have also reduced capital access barriers that discouraged minority and women participation in the A and B block where no minorities or women-owned firms acquired licenses.

The high prices in the C block can be viewed not as an example of bidder irrationality, but as a reaction to a market which did not fund small, minority or women-owned businesses to acquire spectrum licenses. The availability of incentives encouraged the formation and funding of minority and women-owned firms, as well as small firms. Those businesses competed vigorously for licenses now available to them. Without the incentives, such licenses were inaccessible because the market preferred large firms or incumbents, and may have disfavored minority, women-owned or small firms.

The FCC auctions should be examined to determine whether the participation of minority and women-owned firms in auctions fell after installment payments were eliminated. Such a decline would show the importance of capital access to the auctions process. It would also demonstrate the barriers faced by minorities who already face discriminatory barriers in capital markets according to Bradford's study commissioned by the FCC of capital access and broadcast and wireless licensing.